89-367

No.

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1989

In Re:
LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

vs.

ROBERT D. WILSON,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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QUESTION PRESENTED

Does heavy intoxication of a pre-trial detainee signal a medical need or a potential suicide risk and must a police supervisor so train the personnel in a municipal detention center?

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ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

PRAYER

Respondent prays that the Supreme Court deny the petition for writ of certiorari in that the trial and appellate courts applied the applicable constitutional guidelines to the facts on the record and no new constitutional issue is raised.

Respondent agrees with the assertions as to the "Opinion Below", "Jurisdiction" and the "Constitutional Provision Involved".

Respondent agrees that Title 42, Section 1983 is applicable, but points out that Section 1983 creates no new rights and only permits the enforcement of existing constitutional rights. Petitioner has expanded its arguments beyond the cited Fourteenth Amendment and Respondent argues that all issues in this case should be limited to the Fourteenth Amendment cited.

ADDITIONAL STATEMENT OF THE CASE

The actual time during which the pre-trial detainee was unchecked was 54 minutes (T. 225, 802). State law had been changed prior to the incident to require one hour cell checks rather than half hour cell checks. (T. 225, 802).

Petitioner states that the State Appellate Court failed to address the Petitioner's claim that the Trial Court failed to employ the correct State legal standards in entering a directed verdict. This is alleged to deny Petitioner's right of appeal. In fact, the State Appellate Court addressed that issue and cited the State standard set out clearly in the Illinois Code of Civil Procedure and addressed and applied the Illinois case that had been cited by Petitioner (PP. 31-33, 38, Appendix A).

Petitioner states that the State Appellate Court "incorrectly" decided the substantive issue "without apparently considering the substantial contrary authority". In fact, the State Appellate Court cites the standard of "deliberate disregard for David's well being or safety" (P. 39, Appendix A). All of the cases cited by Petitioner were, in fact, cited to the State Appellate Court or could have been except for the *City of Canton, Ohio v. Harris* case which was not then available due to its recent vintage, but the standard set forth in that case was no different than the "deliberate indifferences" standard which was in fact applied to Chief of Police Wilson (Respondent herein) in his supervisory capacity.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT CONFLICT WITH *CITY OF REVERE V. MASSACHUSETTS GENERAL HOSPITAL*, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). THE APPELLATE COURT IN ITS REVIEW RECOGNIZED THE CONSTITUTIONAL REQUIREMENT TO PROVIDE REQUIRED MEDICAL ATTENTION TO DETAINEES AND RULED THAT THE FACTS OF THIS CASE INVOLVING HEAVY INTOXICATION DID NOT SIGNAL A MEDICAL NEED.

City of Revere, supra, clearly states that a municipality owes a constitutional duty to render medical assistance to detainees who have been injured.

The Appellate Court in this case (*Cagodagli*) clearly recognized that principle, but did not find facts on the record which would support a finding against police chief Wilson (P.P. 38-30, Appendix A). A review by the United States Supreme Court would only be a review of the manner in which the Trial and Appellate courts applied this principle. No unexplored facet of constitutional law would be spotlighted before this Court.

II. THIS CASE WOULD NOT BE AFFECTED BY *CITY OF CANTON OHIO V. HARRIS*, ___ U.S. ___, ___ L.Ed. 2d ___, 109 S.Ct. 1197, 1204 (1989) WHICH DEALT WITH CONSTITUTIONAL LIABILITY FOR POLICY IMPLEMENTATION BY POLICE SUPERVISORS. RESPONDENT POLICE CHIEF WILSON WAS NOT SHIELDED FROM LIABILITY BY SUPERVISORY THEORIES. THE LOWER COURTS RULED IN HIS FAVOR BASED UPON THE FACTS OF THE DETENTION.

In *City of Canton, Ohio, supra,* the issue was raised as to liability against supervisors for failure to train. In the *Capodagli* case, the police chief was not supported in the denial of liability by the State trial judge and the State Appellate Court because

he was a supervisor (P. 35, Appendix A). The facts simply did not support liability under the applicable constitutional principles (P. 35, Appendix A).

III. THERE IS NO CONSTITUTIONAL MANDATE REQUIRING POLICE SUPERVISORS TO PROVIDE SUICIDE PREVENTION TRAINING TO MUNICIPAL DETENTION FACILITIES PERSONNEL.

In *Danese v. Asman,* 875 F.2d 1239, 1245 (6th Cir. 1989), the Court of Appeals held that police supervisors enjoyed qualified immunity from liability after a municipal lock-up detainee committed suicide. The Sixth Circuit Court ruled that there is no U.S. Constitutional mandate requiring a police supervisor to provide suicide procedures and training.

IV. A SUPERVISOR OF A MUNICIPAL DETENTION CENTER MAY BE HELD LIABLE FOR POLICIES OR LACK OF TRAINING WHICH SHOWS A DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS OF PRISONERS. SINCE THE APPELLATE COURT CONSIDERED THIS PRINCIPLE IN ITS REVIEW OF THE FACTS OF THIS CASE, NO NEW CONSTITUTIONAL ISSUE IS PRESENT TO BRING ABOUT A UNITED STATES SUPREME COURT REVIEW OF THIS CASE.

Petitioner cites many cases, and Respondent does not disagree with the principle that the constitution mandates that pre-trial detainees should not be treated with deliberate indifference to their serious medical needs.

Petitioner cited a Fourth Amendment case which is not applicable.

In *Jones v. County of DuPage,* 87 C 9841, Judge Duff denied a motion to dismiss charges similar to those in the *Capodagli* case, but the denial was based upon the Fourth Amendment rights of the detainee. The Fourteenth Amendment claim was dismissed.

A reading of the opinion in Appendix A will clearly demonstrate that the constitutional principle of deliberate indifference was considered as the Appellate Court reviewed the facts of the *Capodagli* case.

V. NO POLICY OR CUSTOM INSTITUTED BY POLICE CHIEF WILSON CAUSED A VIOLATION OF DECENDENT'S CONSTITUTIONAL RIGHTS.

A. The Governing Law

1. To prevail under Section 1983, Petitioner must demonstrate that a policy or custom insutituted by Police Chief Wilson, as executed, violated Capodagli's Constitutional rights.

2. Petitioner asserts a violation of substantive due process under the Fourteenth Amendment, consisting of deprivation of life without due process.

3. To demonstrate a deprivaiton of liberty without due process, the conditions of pretrial detention must amount "to punishment of the detainee." *Bell v. Wolfish,* 441, U.S. 520, 535 (1979). Wideranging deference is to be accorded to local jail administrators in the adoption and execution of detention policies. *Id.* at 547. Where, as here, an intent to punish has not been shown, any condition which is an incident of legitimate nonpunitive governmental objective will withstand challenge under the Fourteenth Amendment, even if it appears to constitute punishment on its face. *Id.* at 538-39 and n. 20.

4. The Fourteenth Amendment rights of pretrial detainees are analogized to the Eighth Amendment rights of prisoners. *Roberts v. City of Troy,* 773 F.2d 720, 723 (6th Cir. 1985): *see State Bank of St. Charles v. Camic,* 712 F.2d 1140, 1146 (7th Cir.), *cert. denied,* 464 U.S. 995 (1983).

5. Neither the Supreme Court nor the Seventh Circuit has recognized a constitutional right to be protected from suicide. *See State Bank of St. Charles,* 712 F.2d at 1145 n. 3. Under the Eighth Amendment, Respondent's policies or customs "must reveal deliberate or reckless indifference to the prisoner's safety" in order to justify relief under Section 1983. *Estelle v. Gamble,* 429 U.S. 97, 104 (1976); *see State Bank of St. Charles,* 712 F.2d at 1146. Section 1983 does not confer a cause of action for negligent deprivations of liberty resulting from bodily injuries sustained in jail. *Daniels v. Williams,* ___ U.S. ___, 106 S.Ct. 662, 663, 665-7 (1986); *see Davidson v. Cannon,* ___ U.S. ___, 106 S.Ct. 668, 670 (1986).

6. In order for Petitioner to prevail, the Constitution had to require something that Chief Wilson did not do. As the following discussion demonstrates, no case so holds.

B. The Failure to Check the Cell-Block Every Half-Hour Did Not Give Rise to Relief Under Section 1983.

1. Respondent Had No Consittutional Obligation to Guarantee 30-Minute or One Hour Checks.

   a. There is no record evidence that Capodagli embarked on suicide in the first half hour of his confinement, and thus that a check at that point would have prevented his death.

   b. In *State Bank of St. Charles v. Camic,* 712 F.2d 1140 (7th Cir.), *cert. denied,* 464 U.S. 995 (1983), an obviously intoxicated man was put under arrest, as in this case. As here, the decedent violently resisted arrest and booking, causing one officer to note that he was acting in a 'freaky' manner. Before he was put in a cell, his belt and shoelaces were removed. Just under an hour later, the prisoner was found hanging by his shirt in his cell. He had been dead thirty

minutes. Police Department regulations required hourly cell checks and instructed that every person "should be considered as a potential suicide victim." Plaintiffs appealed Summary Judgment for Defendants.

Held:

(1) Defendants were entitled to Summary Judgment under Section 1983 where it was undisputed that they had no knowledge of or any reason to suspect suicidal tendencies. "knowing that he was behaving violently or was acting in a 'freaky' manner is not synonymous with having reason to know that the violence might become self-directed." *Id.* at 1146.

(2) In the current case, even had Respondent disregarded established procedures such as half-hour or hourly cell checks, that is insufficient, as a matter of law, to demonstrate deliberate disregard for the possibility that the decedent would kill himself. *Id.; accord, Christian v. Owens,* 461 F.Supp. 72, 77 (W.D. Va. 1978) (negligent oversight, during pat-down search, of pistol hidden in boot, no basis for Section 1983 action arising from inmate's suicide 50 minutes after lock-up; Summary Judgment entered for Defendants).

a. *Williams v. City of Lancaster,* 639 F. Supp. 377 (E.D. Pa. 1986), is also closely analogous. The police in that case arrested decedent, who was visibly intoxicated. Before being escorted to his jail cell, the decedent told his brother that he was "ok", did not appear angry or upset, and did not complain of medical problems. State regulations required a cell check every half-hour. The check was routinely skipped between 5:00 and 6:00 a.m., when the on-duty officer instead left the station to feed the police horses. After he returned, he scanned the cell-block shortly

before 6:00 a.m., and found the decedent hanging in his cell. Defendants moved for and received Summary Judgment.

Held:

(1) The failure to follow the 30-minute cell check rule was negligence at best and did not demonstrate a "total indifference to decedent's safety." *Id.* at 384.

(2) Even if it was police department custom to regularly miss the 5:30 check, "Plaintiff has failed to show how that hour-long gap is anything more than mere negligence. A brief departure from the jail regulations does not automatically impinge upon prisoners' Constitutional rights." *Id.*

2. Even Assuming That Illinois Law Required Checks Every Thirty Minutes, the Due Process Clause In No Way *Mandated Adherence To Such a Rule.*

a. The prior Illinois standards recommending cell checks every half-hour, like the National Sheriffs Association Standards, were simply advisory guidelines and did not dictate compliance.

b. Even if they had had binding force, however, that fact would not elevate the rule to Constitutional stature. "The argument that the procedures established by the regulations can themselves be considered a liberty interest is analytically defensible . . . " *Shango v. Jurich,* 681 F.2d 1091, 1100-01 (7th Cir. 1982); *see Carson v. Block,* 790 F.2d 562, 565-66 (7th Cir.), *cert. denied,* ___ U.S. ___, 107 S.Ct. 669 (1986).

c. In the specific context of jail suicides, the Courts have rejected the notion that the failure to follow rules requiring periodic observations amounts to a Constitutional violation for purposes of

Section 1983. *See State Bank of St. Charles,* 712 F.2d at 1146; *Wright v. Wagner,* 641 F.2d 239, 241-42 (5th Cir. Unit A March 30, 1981); *Williams,* 639 F. Supp. at 384.

3. If the Thirty-Minute Cell Check Policy Instituted by Chief Wilson Was Still in Place When Capodagli Died, the City Cannot be Held Liable for Others' Disregard *of the Rule.*

In an official capacity suit, a municipality cannot be held liable unless Plaintiff proves an "affirmative link" between the occurrence of various incidents of police misconduct and the policy adopted by Defendant. *Rizzo v. Goode,* 423 U.S. 362, 371 (1976).

C. Inadequate Training Programs Do Not Offend Due Process

Last Term, the Supreme Court granted certiorari in *City of Springfield v. Kibbe,* No. 85-1217, 54 U.S.L.W. 3598 (cert. granted March 11, 1986) to consider whether inadequate police training constitutes a basis for municipal liability under Section 1983. In *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 105 S.Ct. 2427, 2436 (1985), a four-member plurality cast doubt on such liability: "[T]he word 'policy' generally implies a course of action consciously chosen from various alternatives . . ." and therefore one cannot be said to pursue a policy of inadequate training absent "proof that policymakers deliberately chose a training program which would prove inadequate." As a matter of law, the police chief's failure to institute a suicide prevention program or CPR training does not rise to the conscious choice among alternatives required to impose liability under Section 1983.

1. Lack of Suicide Prevention Program.

Neither Capodagli's behavior nor a prior history of suicides at the Markham jail created a strong likelihood of suicide, and therefore the absence of a suicide prevention program in no way offended due process. *Estate of Cartwright v. City of Concord,* 618 F. Supp. 722, 727-28, (N.D. Cal. 1985) (lack of preventive care did not create liability for jail

suicide); *Wright v. Wagner,* 641 F.2d at 241-42 n. 2 (failure to place suicide victim, who previously tried to strangle himself, in a padded cell not actionable where Defendants had no reason to suspect insanity); *see Estate of Davis v. Johnson,* 745 F.2d 1066, 1071 (7th Cir. 1984) (Section 1983 judgment against police clerk reversed); *State Bank of St. Charles,* 712 F.2d at 1146 (affirming Summary Judgment for Section 1983 Defendants where jail personnel had no reason to suspect suicidal tendencies).

2. Lack of CPR Training.

a. The record evidence is undisputed that Capodagli was dead when he was found, depriving Petitioner of the requisite causal link between any deficiency in CPR training and his death. *Estate of Cartwright,* 618 F. Supp. at 730 n. 5.

b. In *Estate of Cartwright,* the failure to administer CPR did not amount to a Constitutional violation as a matter of law where officers immediately cut the suicide victim down, called the ambulance and checked for vital signs. 618 F. Supp. at 729-30.

D. The Due Process Clause Does Not Mandate the Medical Screening of Inebriates or the Mentally Ill.

1. Disregard of police department regulations that barred jailing detainees displaying a mental disorder at best indicates negligence, not callous indifference. *Estate of Davis,* 745 F.2d at 1071 n. 1.

2. Although state regulations in *Williams v. City of Lancaster* called for medical exams of all "suspected inebriates", the failure to have a physician examine an obviously intoxicated detainee could not "be deemed more than mere negligence" where he was conscious; did not complain of or exhibit mental or physical stress; did not ask for a doctor;

and told his brother he was "ok". 639 F. Supp. at 383 (granting Summary Judgment in Section 1983 suit to Defendants).

3. Once again, nothing in Capodagli's behavior gave rise to a perceived need for medical screening. *State Bank of St. Charles,* 712 F.2d 1145 (Affirming Summary Judgment for Section 1983 Defendants).

E. No Constitutional Deficiency Arose From the Absence (If Any) of Video or Audio Surveillance.

1. The record supports a finding of audio monitoring. Even assuming it does not, however, the failure to invest in audio or video Survellance equipment either did not amount to a conscious policy, *Tuttle,* 471 U.S. at ___, 105 S.Ct. at 2436 (plurality opinion), or represented a legitimate nonpunitive allocation of resources, *see Bell v. Wolfish,* 441 U.S. at 538-39 and n. 20.

2. There is no Constitutional duty to install a video jail surveillance system, *State Bank of St. Charles,* 712 F.2d at 1146, even in the face of multiple suicides, *Williams,* 639 F. Supp. at 384. The opposite result would be tantamount to imposing strict liability for all jail suicides absent video monitoring systems. *Williams. Id.*

F. There Is No Record Evidence That Any of the Complained-of Deficiencies Caused Capodagli's Death.

1. In order to sustain an award under Section 1983, Plaintiff must demonstrate that the complained-of policies, as executed, were "the moving force of the Constitutional violation". *Monnell,* 436 U.S. at ___, 105 S.Ct. at 2436-37 and n. 8 (plurality opinion); *Polk County v. Dodson,* 454 U.S. 312, 326 (1981).

2. Furthermore, Plaintiff must "establish that the unconstitutional act was taken *pursuant to* a municipal policy rather than simply resulting from

such a policy in a 'but for' sense". *Pembaur v. City of Cincinnati,* ___ U.S. ___, 106 S.Ct. 1292, 1299-1300 n. 11 (plurality opinion) (emphasis in original); *City of Oklahoma City,* 471 U.S. at ___, 105 S.Ct. at 2441 n. 9 (Brennan, J., concurring). The Supreme Court recently accepted certiorari in *City of St. Louis v. Praprotnik,* No. 86-772, 55 U.S.L.W. 3472 (*cert. granted* Jan. 13, 1987) to explore the principles of causation in Section 1983 suits applicable to local governments.

3. Simply put, Plaintiff's arguments consist of nothing more than that her son might not have died *but for* the failure to follow certain beneficial practices: half-hour cell checks, medical screening, suicide prevention training, CPR techniques, and video and audio surveillance. Even assuming the Constitution required such practices (a conclusion we dispute), the fact that they were not employed was inadequate here, under *Pembaur* and *City of Oklahoma City,* to support a verdict since any deficiency did not cause Capodagli to kill himself.

   "[I]t is open to question whether a policymaker's 'gross negligence' in establishing police training practices could establish a 'policy' that constitutes a 'moving force' behind subsequent unconstitutional conduct, or whether a more conscious decision on the part of the policymaker would be required." *City of Oklahoma City,* 471 U.S. at ___, 105 S.Ct. at 2436 n. 7.

G. None of the Cases On Which Petitioner Relies Justifies Relief.

1. *Partridge v. Two Unknown Police Officers,* 791 F.2d 1182 (5th Cir. 1986) (cited at Appellant's Brief p. 38) is distinguishable on two grounds:

   a. There, unlike her, the police knew the prisoner had suffered a nervous breakdown and was a mental patient. *Id.* at 1184; *compare State Bank*

of St. Charles, 712 F.2d at 1146.

b. That case involved a Motion to Dismiss the pleading and simply allowed Plaintiff, under liberal pleading standards, to attempt to prove his case. Here, by contrast, Plaintiff has tried and failed to prove her case. *See Estate of Cartwright,* 618 F. Supp. at 727 n. 4.

2. *Jackson v. City of Chicago,* No. 85 C 7913, slip op. (N.D. Ill. Oct. 24, 1986) (cited at Appellant's Brief p. 29) and *Mader v. City of Chicago,* No. 86 C 7914, slip op. (N.D. Ill. Oct. 30, 1986) (same) are distinguishable as cases in which alleged police beatings contributed to and should have put Defendants on notice of the risk of suicide. Those cases also were decided in the posture of a Motion to Dismiss rather than on the basis of evidence adduced at trial.

VI. THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IS NOT A FONT OF TORT LAW TO BE SUPERIMPOSED ON STATE TORT REMEDIES.

Petitioner pleaded and proved conduct which if negligent, did not rise to the level of a Constitutional Tort. Failure to prove more than negligence gave the Trial Court the basis to grant a new trial or to grant a judgment for Respondent notwithstanding the verdict of the jury.

The Due Process Clause is not a font or tort law to be superimposed on State tort remedies. *Daniels v. Williams,* 106 S.Ct. 662, 666 (1986); *Parratt v. Taylor,* 451 U.S. 527, 544 (1983); *Paul v. Davis,* 424 U.S. 693, 701 (1976).

The actions of the police were not shown to be grossly negligent as to arise to the level of "deliberate indifference" required to from the basis of a Constitutional Tort.

See, e.g., Fiacco v. City of Rensselaer, N.Y., 783 F.2d 319, 326 (2d Cir. 1986) (holding that the City may be held liable under Section 1983 for nonsupervision of police officers "on the basis

of a policy of deliberate indifference to the Constitutional rights of persons within its domain."); *Voutour v. Vitale*, 761 F.2d 812, 820 (1st Cir. 1985) ("Like most other court have addressed the matter, we hold that the supervisor must demonstrate at least gross negligence amounting to deliberate indifference, and that this conduct must be causally linked to the subordinate's violation of Plaintiff's civil rights."), *cert. denied*, 106 S.Ct. 979 (1986); *Languirand v. Hayden*, 717 F.2d 220, 227 (5th Cir. 1983) ("failure to train must constitute gross negligence amounting to conscious indifference"), *cert. denied*, 467 U.S. 1215 (1984); *Owens v. Haas*, 601 F.2d 1242, 1247 (2d Cir.) ("the failure to train or supervise law enforcement officers must be so grossly negligent as to constitute 'deliberate indifference' in order to hold the county liable"), *cert. denied*, 444 U.S. 980 (1979). *Cf. Marchese v. Lucas*, 758 F.2d 181, 187-88 (6th Cir. 1985) (affirming finding of liability of county because of official toleration of, if not complicity in, assault on prisoner, as well as concealment of events and subsequent failure to investigate), petition for cert. pending sub nom. *County of Wayne v. Marchese*, No. 85-359; *Grandstaff v. City of Borger, Texas*, 767 F.2d 161, 169 (5th Cir. 1985) (recognizing that for a City to be liable under Section 1983 "[t]here must be (1) a policy (2) of the City's policymaker (3) that caused (4) the Plaintiff to be subjected to a deprivation of a Constitutional right"; and ultimately affirming City liability where City policymaker knew or should have known City's police officers were likely to shoot to kill without justification and without restraint); *Wellington v. Daniels*, 717 F.2d 932, 936 (4th Cir. 1983) ("A number of courts have interpreted *Monell* to hold that a municipal policy of authorizing or condoning police misconduct can be inferred where the municipality has been grossly negligent in the supervision and training of its police force."); *Hays v. Jefferson County*, 668 F.2d 869, 874 (6th Cir.) (municipal liability arises only where the Plaintiff has shown a complete failure to train or training is so reckless or grossly negligent that future police misconduct is almost inevitable), *cert. denied*, 459 U.S. 833 (1982); *Herrera v. Valentine*, 653 F.2d 1220, 1224 (8th Cir. 1981) (municipality may be held liable under Section 1983 for its failure to train police officers or its grossly negligent training); *Leite v. City of Providence*, 463 F. Supp. 585, 591 (D.R.I. 1978) ("training

must be nonexistent or reckless, or grossly, palpably, and culpably negligent").

VII. STATE AND PROFESSIONAL STANDARDS DO NOT IMPOSE BINDING LEGAL OBLIGATIONS MUCH LESS MIRROR CONSTITUTIONAL REQUIREMENTS.

Petitioner presented an expert witness, Joseph R. Rowan. Mr. Rowan has spent his professional career helping to improve conditions in United States jails (T. 185-86). Mr. Rowan witnessed many improvements over the years (T. 237). In 1982, Mr. Rowan's organization presented a seminar on suicide detection in the Chicago area and attracted about 550 attendees (T. 237). He has served on commissions and has helped draw-up standards to serve as "goals" (T. 238). Standards of the National Sherriff's Association and of the American Medical Association referred to by Mr. Rowan have been adopted as law by "eight or nine states" (T. 238). The information supplied by Mr. Rowan and cited in Petitioner's Brief is informative and helpful to anyone seeking improvement in jail conditions; however, Mr. Rowan admitted that the law in Illinois does not require suicide detection training or medical examination and constant observation of all intoxicated persons (T. 238) nor CPR training and the standards presented have not been passed as law in Illinois (T. 238).

In referring to the Illinois Standards passed in 1977 and changed in July, 1980, the month of the jail suicide in this case, Mr. Rowan referred to the fact that "inebriates" should be examined by a physician before confinement (T. 225). Mr. Rowan's stressed reading of that standard would have easily been overcome by the Trial Court's judicial notice that all persons suspected of intoxication in Illinois (e.g. driving under the influence arrests) are not given medical examination before being detained in municipal lock-ups.

Edward Holba, ruled as qualified to give expert opinions (C 799), testified that the American Medical Association and National Sheriff's Standards are not binding and have not been implemented in the south suburbs, at least (C 801). Mr. Holba reviewed the July, 1980 standards of the Illinois Department of

Corrections (C 802) and testified that those provisions likewise are minimum standards to be followed (C 802). Mr. Holba testified that, in his opinion, Markham did, in fact, meet those State standards (C 803). Mr. Holba testified that Markham, as well as other suburbs, had a policy that in some circumstances a highly intoxicated person would be taken for a medical examination (C 804-5). He testified it would be impractical to take all intoxicated people for a medical examination (C 805). He stated that, "The Oak Forest Police Department alone generated 50 to 60 DUI arrests per month and it would be almost impossible to take a person in for a two to three hour type of test to find out how badly they are under the influence" (C 805). Mr. Holba listened to much of the trial testimony and reviewed the other depositions (C 800). He testified that the handling of the decedent was done in a normal and customary way (C 806-7). Suicide detection training was not requried nor available in any of the suburban police departments (C 808). CPR is taught in the Police Academy but is not mandatory nor required by law for a policeman (C 808).

The standards set forth by Petitioner are interesting and should be implement by society. Those standards, however, are not binding and are not Constitutional requirements.

Those standards were admitted into evidence over the objection of Repondent but there was a negligence count pending when they were admitted and they would have been admissible for purposes of the negligence count. When the matter was submitted to the jury, there was no negligence count pending as that count was concluded by Summary Judgment. It was an error for the Trial Court to permit Instruction No. 18 (C 470) and Instruction No. 17 (C 469) which permitted Mr. Rowan's materials to be viewed by the jury.

If relief is granted to Petitioner, then Respondent should be granted a new trial.

CONCLUSION

The Trial and Appellate Courts were aware of the applicable constitutional principles in this case. The facts on the record do not support liability and no unexplored constitutional point is present to support granting a writ of certiorari.

Respectfully submitted,

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